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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Bloomberg Inc., Bloomberg L.P., Bloomberg Finance L.P., The Charles Schwab Corporation, Charles Schwab & Co., Inc., E*TRADE Financial Corporation, E*TRADE Securities LLC, E*TRADE Clearing LLC, optionsXpress Holdings Inc., optionsXpress, Inc., TD Ameritrade Holding Corp., TD Ameritrade, Inc., TD Ameritrade IP Company, Inc., and thinkorswim Group Inc.
Petitioner,

v.

MARKETS-ALERT PTY LTD.

Patent Owner.

Case CBM2013-00005 (JYC)

Patent No. 7,941,357

**PETITIONER'S OPPOSITION TO
PATENT OWNER MARKETS-ALERT MOTION TO AMEND**

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LIST OF CITED EXHIBITS

Exhibit 1001	U.S. Patent Number 7,941,357 (the “357 Patent”)
Exhibit 1004	PCT Patent Application No. PCT/US99/18767, Publication No. WO 00/11587 (published Mar. 2, 2000)(Michael Satow <i>et al.</i> , applicants) (“Satow”)
Exhibit 1005	John Sweeney, <i>Product Review: TradeStation 4.0 Build 15</i> , Stocks & Commodities, December 1996, at 649 (“S&C Review”)
Exhibit 1009	<i>Window On WallStreet Internet Trader Deluxe User's Guide</i> , 1998 (“Windows on WallStreet User Guide”).
Exhibits 1010-1013	<i>Window On WallStreet Internet Trader Pro 7 – Alert Manager</i> (Dec. 3, 1998), available at http://web.archive.org/web/19981203133004/http://www.windowonwallstreet.com/Alertmanager.html ; <i>Window On WallStreet Day Trader 7 Internet Version</i> (Apr. 23, 1999), available at http://web.archive.org/web/19990423090801/http://www.windowonwallstreet.com/dt7internet.html ; <i>Window On WallStreet Internet Trader Pro 7 – Tour Overview</i> (Dec. 7, 1998), available at http://web.archive.org/web/19981207032249/http://www.windowonwallstreet.com/touroverview.html ; and <i>Window On WallStreet Internet Trader Pro 7 – What's New?</i> (Dec. 2, 1998), available at http://web.archive.org/web/19981202154050/http://www.windowonwallstreet.com/whatsnew.html (collectively “Windows on WallStreet Web Archives”)
Exhibit 1014	Paul Luebbe, AIQ Opening Bell Monthly Vol. 8, Issue 10, October 1999 (“Opening Bell”)
Exhibit 1015	U.S. Patent 5,954,793 to Stutman <i>et al.</i> (“Stutman”)
Exhibits 1026-1032	<i>Investor/RT Tour</i> (August 18, 2000), available at http://web.archive.org/web/20000818211350/http://www.linsoft.com/tour/index.htm ; <i>Investor/RT Tour – Technical Indicators</i> (May 12, 2000), available at http://web.archive.org/web/20000512005220/http://www.linsoft.com/tour/technicalindicators.htm ; <i>Investor/RT Tour – Alarm Preferences</i> (May 22, 2000), available

	<p>at http://web.archive.org/web/200005222325275/http://www.linnsoft.com/tour/prefs_alarms.htm; <i>Investor/RT Tour –Alarms/Alerts</i> (August 19, 2000), available at http://web.archive.org/web/200008190803135/http://www.linnsoft.com/tour/alerts.htm; <i>Investor/RT Tour –myTrack Preferences</i> (February 29, 2000), available at http://web.archive.org/web/20000229053607/http://www.linnsoft.com/tour/prefs_mytrack.htm; <i>Investor/RT Tour – Instrument Setup</i> (April 7, 2000), available at http://web.archive.org/web/20000407193607/http://linnsoft.com/tour/instrumentsetup.htm; and <i>Investor/RT Tour –Scans</i> (February 29, 2000), available at http://web.archive.org/web/20000229160235/http://www.linnsoft.com/tour/scans.htm (collectively “Investor/RT”)</p>
Exhibit 1033	Press Release, PR Newswire, Data Broadcasting Launches Esignal Version 5.3 with Enhanced Alerts Capabilities And Improved Nasdaq Level II Tools (June 12, 2000) (“eSignal”)
Exhibit 1035	Transcript of the August 28, 2013 deposition of Markets-Alert’s technical expert, Mr. Neal Goldstein, filed herewith
Exhibit 1036	U.S. Patent 7,873,555 to Kraemer, filed herewith
Exhibit 1037	PCT WO00/28487 to Chrapaty, filed herewith
Exhibit 1038	PCT WO98/58356 to Keilani, filed herewith
Exhibit 1039	PCT WO00/33217 to Ambrose, filed herewith
Exhibit 1040	U.S. Patent 5,938,732 to Lim et al., filed herewith
Exhibit 1041	U.S. Patent 4,554,418 to Toy, filed herewith
Exhibit 1042	Errata sheets for transcript of Mr. Neil Goldstein’s August 28, 2013 deposition, filed herewith
Exhibit 1043	Second Declaration of Dr. Steven Kursh, Ph.D., CSDP, CLP (“SK Decl.”), filed herewith
Exhibit 2023	Declaration of Mr. Neal Goldstein (“NG Decl.”)

I. STATEMENT OF PRECISE RELIEF AND OVERVIEW OF WHY MARKETS-ALERT’S REQUESTED RELIEF SHOULD BE DENIED

Petitioners Bloomberg et al. (“Petitioners”) ask the Board to *deny* Markets-Alert’s (“MA”) substitute motion to amend (“Motion”).¹ The moving party bears the burden to show entitlement to the relief requested. 37 CFR 42.20(c).

Accordingly, MA bears the burden of providing comparison of the proposed claims with those being replaced, construction of its proposed claims, and demonstration that those claims do not add new matter. MA also must show that the proposed claims recite technical features that make those claims patentable over both the prior art of record and prior art known to MA. Petitioner does not have to show unpatentability.

MA’s Motion fails both procedurally and substantively. The Motion and supporting documentation fail to provide construction of the proposed claims or proper comparison with the claims being replaced. MA further fails to identify sufficient support in the ’357 Patent for the proposed claims, and does not identify any limitation that distinguishes the proposed claims from the prior art. Therefore, MA’s substitute motion to amend must be denied.

II. NEW CLAIMS 5-8 IMPROPERLY ENLARGE THE CLAIM SCOPE

A. New Claims 5-8 Are Improperly Broader Than the ’357 Patent Claims

¹ MA’s substitute motion to amend replaces its initial motion to amend, which exceeded the page limit requirements. *See* PN 39; *see also* PN 41; 42.

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